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Robert R. Corbin

March 12, 1984

Mr. Bill Jamieson, Jr., Director
Department of Administration
State Capitol
1700 W. Washington, Room 809
Phoenix, Arizona 85007

Re: I84-037(R83-142)

Dear Mr. Jamieson:

You have asked whether the Department of Administration ("Department") under A.R.S. §§ 38-611 and 41-763(5) is required to recommend the salary for the Public Safety Personnel Retirement System Administrator ("administrator") or whether the administrator's salary is set by the fund manager under A.R.S. § 38-848.J.7.¹

A.R.S. § 38-611 concerns "Compensation of certain state officers and employees" and provides, in part:

A. Except as otherwise provided in subsections C and D [not applicable], any officer or employee of the state, or any of its agencies, who is exempt from the state

1. 1983 amendment effective April 19, 1983, as amended by Laws 1983, ch. 150, § 2. The text as amended by Laws 1983, Ch. 300, § 14 would be A.R.S. § 38-848.I.6, but the revisers note states:

The amendment of this section by Laws, 1983, chapter 300, section 14 failed to set forth in full the text of the section as amended by Laws 1983, chapter 150, section 2, an emergency act, as required by Constitution of Arizona Article IV, part 2, section 14.

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personnel system shall receive a salary within the range as recommended by the department of administration in its annual recommendation to the legislature and the joint legislative budget committee unless modified by the legislature.

To carry out this statutory requirement, the director of the Department is required to make a salary recommendation pursuant to A.R.S. § 41-763.5 which provides that the director shall:

5. Make an annual recommendation to the legislature and the joint legislative budget committee of a salary plan and adjustments to the plan for employees in the state service and executive service and an advisory recommendation for all statutorily established agency heads, statutory or appointed agency heads under the jurisdiction of boards or commissions, members of salaried boards or commissions governing state service agencies, all statutorily exempt salaried division heads within state service-agencies and all positions that have been or that will be exempted from covered service by the director.

. . . Recommendation shall govern the salary of the position until revised by the director as part of his next annual recommendation to the legislature and the joint legislative budget committee.

In 1980, the legislature amended A.R.S. § 38-848.J.7 to expressly exempt the administrator from operation of A.R.S. § 41-763.5, quoted above. A.R.S. § 38-848.J.7. now provides:
The administrator and other employees hired by the fund manager [of the Public Safety Personnel Retirement System] are not under the jurisdiction of the state personnel board or subject to Title 41, ch. 4, Art. 5 and 6.

Notwithstanding these amendments, we conclude that the administrator's salary is nonetheless subject to the recommendations of the Department pursuant to A.R.S. § 38-611.

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A.R.S. § 38-611 requires the department to set the salary range of all exempt officers and employees of the state. Although A.R.S. § 38-848.J.7 requires that the fund manager of the Public Safety Personnel Retirement System employ an administrator, that statute does not authorize or instruct the fund manager to set the salary of that administrator.

Black's Law Dictionary defines "employ" as:
To engage in one's service; to hire, to use as an agent or substitute in transacting business; to commission and entrust with the performance of certain acts or functions or with the management of one's affairs.

Black's Law Dictionary 471 (5th Ed. 1979).

The term "employ" does not connote necessarily that the salary is to be set by the same person doing the employing:


The word "employ" is used in divers significations. Although it usually imports the relation of master and servant, or of employer and employee, this is not the universal rule, and the idea of compensation is not necessarily involved in the term.

Antichi v. New York Indemnity Co., 126 Cal.App. 284, 14 P.2d 598, 600 (1932).

If the Legislature intended to allow the fund manager to set the salary of the administrator it could easily have done so when it amended A.R.S. § 38-848.J.5. The failure of the Legislature to exempt the administrator's salary from A.R.S. § 38-611 leads us to conclude that the Legislature intended that the authority to set the salary of the administrator remains with the Department.

Accordingly, we conclude there is no authority for the fund manager to set the salary of the administrator. This authority is reserved to the Department of Administration under A.R.S. § 38-611.

Sincerely,



BOB CORBIN
Attorney General

BC:DR:pd